

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TRACEY N. THOMPSON,
Plaintiff,

v.

TNDC, et al.,
Defendants.

Case No. 18-cv-05057-PJH

**ORDER DISMISSING ACTION WITH
PREJUDICE**

On August 17, 2018, plaintiff Tracey Thompson filed an application for leave to proceed in forma pauperis (“IFP”) and a complaint. Dkts. 1–2. On September 13, 2018, Magistrate Judge Ryu issued a report and recommendation recommending that the complaint be dismissed for lack of subject matter jurisdiction. Dkt. 5. Judge Ryu explained that “[t]his is an action for wrongful eviction” of Thompson from “Civic Center Residence (Civic Center), a housing complex owned and operated by Defendant Tenderloin Neighborhood Development Corporation (TNDC).” Dkt. 5 at 1. Judge Ryu concluded that the court did not have jurisdiction over the action pursuant to federal subject-matter jurisdiction because no cause of action or claim was alleged under the Constitution, laws, or treaties of the United States, even though the allegations “strongly suggest that TNDC is a non-profit California corporation that may receive federal funding.” *Id.* at 3–4. Judge Ryu reasoned that “[t]he mere existence of federal funds in a case does not, by itself, create a federal question.” *Id.* at 4. Instead, “Thompson alleges a claim for wrongful eviction, which arises under state law.” *Id.* at 4. Judge Ryu also found that diversity of citizenship does not exist sufficient to establish diversity jurisdiction

1 because both plaintiff and defendant TNDC are citizens of California. Id. at 4–5.

2 Plaintiff did not object to the report and recommendation, and on December 21,
3 2018, this court issued an order adopting it “in every respect.” Dkt. 14. This court
4 dismissed the action with leave to amend and set a deadline for plaintiff to file any
5 amended complaint by February 4, 2019. Id. The court ordered that plaintiff could not
6 add any claims or parties without leave. Id.

7 On January 3 and 4, 2019, Thompson submitted materials that this court
8 construed as a motion for intra-division transfer of the case from Oakland to San
9 Francisco. Because the case had been dismissed, there was (and remains) no pending
10 complaint to transfer. On March 13, 2019, this court issued an order to show cause
11 requiring plaintiff to show why the case should not be dismissed with prejudice for failure
12 to amend the complaint by the February 4 deadline, and for failure to prosecute the
13 action. Dkt. 17. The order to show cause and any amended complaint were due by April
14 19, 2019.

15 On March 18, 2019, the court received a letter from Thompson dated March 15,
16 2019. In it, Thompson stated that defendant is a federally subsidized hotel, she has
17 photographs showing her apartment is inhabitable, maintenance workers at the
18 apartment would not help her, the sheriff posted a notice to vacate, the apartment
19 manager will not let her pick up all of her things, and there were tarantulas in the sink
20 pipes. Dkt. 19.

21 The court understands that plaintiff’s health problems contributed to her failure to
22 meet the February deadline to amend her complaint, and the order to show cause is
23 discharged. However, plaintiff has still failed to state a claim over which this court has
24 jurisdiction. Plaintiff’s claims continue to suffer from the same deficiencies as her original
25 complaint, which were identified by Judge Ryu and adopted by this court. Plaintiff has
26 provided no indication that any of the parties are not citizens of California for purposes of
27 diversity jurisdiction, nor has she alleged any cause of action arising under the
28 Constitution, laws, or treaties of the United States for purposes of federal question

1 jurisdiction. Plaintiff continues to allege that the apartment building at the center of her
2 complaint is federally funded, but for the reasons explained previously that is insufficient
3 to establish this court's jurisdiction. Given that plaintiff has had ample opportunity to
4 amend her complaint, and because it does not appear that she could allege any facts
5 establishing this court's jurisdiction over the case even if given further opportunity, this
6 action is DISMISSED WITH PREJUDICE.

7 **IT IS SO ORDERED.**

8 Dated: May 10, 2019



PHYLLIS J. HAMILTON
United States District Judge